

AMENDED IN SENATE SEPTEMBER 4, 2003

AMENDED IN SENATE AUGUST 19, 2003

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 17, 2003

AMENDED IN SENATE JUNE 10, 2003

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Goldberg
(Principal coauthor: Senator Torlakson)

February 20, 2003

An act to amend Section 54999.1 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory charge, including, but not limited to, a connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both. ~~The bill would define the term “nondiscriminatory” with respect to a service rate, commodity charge, or surcharge.~~

~~The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public agency that provides public utility service to charge a public agency nondiscriminatory monthly or periodic service rates, commodity charges, or surcharges, according to specified criteria. The bill would, except with respect to the imposition of a capital facilities fee on a school district, county office of education, community college district, the California State University, the University of California, or state agency, require a public agency that provides public utility service to only charge a public agency rates, charges, surcharges, or fees that are determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users. It would require any judicial action or proceeding by a public agency that seeks a refund, or challenges the validity, of a fee, rate, charge, or surcharge, or increase, or any action by a public agency to validate an ordinance, resolution, or motion imposing or increasing any of these, to be commenced as specified.~~

The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 54999.1 of the Government Code is
- 2 amended to read:
- 3 54999.1. For purposes of this chapter:
- 4 (a) “Actual construction costs” includes the cost of all
- 5 activities necessary or incidental to the construction of a public
- 6 utility facility, such as financing, planning, designing, acquisition
- 7 of property or interests in property, construction, reconstruction,
- 8 and rehabilitation.

1 ~~(b) “Capacity charge” means any charge imposed on~~
2 ~~customers who are requesting new public utility services and that~~
3 ~~is designed to recover costs of public utility facilities necessary to~~
4 ~~serve new customers.~~

5 ~~(c) “Capital facilities fee” means any nondiscriminatory~~
6 ~~charge imposed to pay for public utility facilities, including, but~~
7 ~~not limited to, a connection fee, a capacity charge, or both.~~
8 ~~“Capital facilities fee” does not include a service rate, commodity~~
9 ~~charge, or surcharge, or any capital component thereof.~~

10 ~~(d) “Connection fee” means a fee for the physical facilities~~
11 ~~necessary to connect a public agency facility to a public utility,~~
12 ~~including, but not limited to, meters, meter boxes, and pipelines to~~
13 ~~make the connection, that does not exceed the actual cost of labor~~
14 ~~and materials for the installation of those facilities.~~

15 ~~(e) (1) With respect to a capital facilities fee,~~
16 ~~“nondiscriminatory” means that the capital facilities fee does not~~
17 ~~exceed an amount determined on the basis of the same objective~~
18 ~~criteria and methodology applicable to comparable nonpublic~~
19 ~~users, and is not in excess of the proportionate share of the cost of~~
20 ~~the public utility facilities of benefit to the person or property~~
21 ~~being charged, based upon the proportionate share of the use of~~
22 ~~those facilities.~~

23 ~~(2) With respect to service rates, commodity charges, or~~
24 ~~surcharges imposed by a public agency that provides public utility~~
25 ~~service, “nondiscriminatory” means that the rate, charge, or~~
26 ~~surcharge is not in excess of the reasonable cost of providing the~~
27 ~~public utility service based on a metered, volumetric, or flat rate~~
28 ~~structure, or any combination thereof, that is proportioned by~~
29 ~~customer usage, to the maximum extent feasible within the rate~~
30 ~~structure. Rates and charges for wastewater discharge shall be~~
31 ~~based upon any of the following:~~

32 ~~(A) A volumetric basis proportioned by customer usage.~~

33 ~~(B) The basis of average flows and loadings for wastewater~~
34 ~~discharge.~~

35 ~~(C) An equivalent dwelling unit methodology.~~

36 ~~(D) Any other computational methodology to determine~~
37 ~~proportionate customer usage, to the maximum extent feasible~~
38 ~~within the rate structure, or as can be provided for in a flat rate~~
39 ~~structure.~~

40 ~~(f)–~~

1 (b) “Capacity charge” means a one-time charge to recover the
2 costs of public utility facilities necessary to establish new or
3 expand existing public utility service to a public agency.

4 (c) (1) “Capital facilities fee” means a nondiscriminatory
5 connection fee, a nondiscriminatory capacity charge, or both.
6 “Capital facilities fee” does not include any other rate, charge, or
7 surcharge, or any capital component thereof.

8 (2) For purposes of this subdivision, “nondiscriminatory”
9 means that the fee does not exceed an amount determined on the
10 basis of the same objective criteria and methodology applicable to
11 comparable nonpublic users, and is not in excess of the
12 proportionate share of the cost of the public utility facilities of
13 benefit to the person or property being charged, based upon the
14 proportionate share of use of those facilities.

15 (d) “Connection fee” means a fee to recover the costs of the
16 physical facilities necessary to directly connect a public agency
17 facility to a public utility service provided by a public agency,
18 including, but not limited to, meters, meter boxes, and pipelines to
19 make the connection, and the actual cost of labor and materials for
20 the installation of those facilities.

21 (e) “Public agency” means the United States or any of its
22 agencies, the state or any of its agencies, the California State
23 University, the Regents of the University of California, a county,
24 a county office of education, a city, a school district, community
25 college district, or any other district, a public authority, or any
26 other political subdivision or public corporation of this state.

27 ~~(g)~~

28 (f) “Public utility facility” means a facility for the provision of
29 water, light, heat, communications, power, or garbage service, for
30 flood control, drainage or sanitary purposes, or for sewage
31 collection, treatment, or disposal.

32 ~~(h)~~

33 (g) “Public utility service” means service for water, light, heat,
34 communications, power, or garbage, or for flood control, drainage
35 or sanitary purposes, or sewage collection, treatment, or disposal,
36 provided by a public agency.

37 ~~(i) (1) “Service rate,” “commodity charge,” or “surcharge”~~
38 ~~means a rate or charge, including any capital component thereof,~~
39 ~~and with respect to sewer services, the service fee or service~~
40 ~~charge, billed on a monthly or periodic basis to all users to recover~~

1 ~~the costs of providing public utility services to those users,~~
2 ~~including the costs of operation, maintenance, construction,~~
3 ~~repair, replacement, or rehabilitation of facilities, or debt service~~
4 ~~payments on facilities.~~

5 (2) ~~A service rate, commodity charge, or surcharge is imposed~~
6 ~~on the date on which the fee, rate, charge, or surcharge is adopted~~
7 ~~by the public agency imposing it.~~

8 (3) ~~A surcharge may be included in the same billing statement~~
9 ~~as the service rate or commodity charge.~~

10 ~~(j)–~~

11 (h) “State agency” or “state” means any state office,
12 department, division, bureau, board, or commission.

13 SEC. 2. Section 54999.7 is added to the Government Code, to
14 read:

15 ~~54999.7. (a) Notwithstanding any other provision of this~~
16 ~~chapter, a public agency that provides public utility service may~~
17 ~~charge a public agency nondiscriminatory monthly or periodic~~
18 ~~service rates, commodity charges, or surcharges. A public agency~~
19 ~~providing public utility service proposing to increase a service~~
20 ~~rate, commodity charge, or surcharge in excess of the percentage~~
21 ~~increase in the Implicit Price Deflator for State and Local~~
22 ~~Government Purchases, as determined by the Department of~~
23 ~~Finance as measured from the effective date of the existing rate or~~
24 ~~charge to the effective date of the proposed rate or charge, shall~~
25 ~~notify by certified mail any school district, county office of~~
26 ~~education, community college district, California State~~
27 ~~University, University of California, or state agency located within~~
28 ~~its service area that is a water, sewer, or electric utility customer~~
29 ~~of the public agency, not less than 30 days prior to the date of any~~
30 ~~hearing set to consider an ordinance, resolution, or motion~~
31 ~~enacting or increasing such a service rate, commodity charge, or~~
32 ~~surcharge. The notice shall state the date, time, and place of any~~
33 ~~hearing.~~

34 ~~(b) The notice described in subdivision (a) shall designate an~~
35 ~~individual at the public agency that provides public utility service~~
36 ~~who shall make available, upon request, for review and inspection~~
37 ~~by any school district, county office of education, community~~
38 ~~college district, California State University, University of~~
39 ~~California, or state agency located within its service area, the~~
40 ~~specific information relied upon in setting the service rate,~~

~~commodity charge, or surcharge, or increase thereto, including any capital component of the rate increase, and including the methodology used to calculate and allocate the expenditures giving rise to the service rate, commodity charge, or surcharge, or increase thereto. The affected school district, county office of education, community college district, California State University, University of California, or state agency shall designate the individual who is to receive the notice, and the public agency providing public utility service shall direct the notice to that individual. If no individual is designated, then the notice shall be addressed to the billing address of the affected facility.~~

~~(c) In these rate matters, any school district, county office of education, or community college district, the California State University, the University of California, or any state agency that is a customer of a public utility provider shall participate in a public process within that ratesetting cycle, including, but not limited to, any public hearings of the public utility on ratesetting issues.~~

~~(d) A school district, county office of education, or community college district, the California State University, the University of California, or a state agency that is a customer of a public agency that provides public utility services may petition the trial court to invalidate a ratesetting that is not in compliance with the requirements of paragraph (2) of subdivision (c) of Section 54999.1. If one or more public agencies prevail on two separate and distinct rate invalidation proceedings for the same category of public utility service within nine years, the public agency providing public utility services shall thereafter be required to initiate validating proceedings for that category of public utility service in the three subsequent ratesetting actions, in accordance with Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure and shall pay costs, including reasonable attorney fees, for both parties to such a validating proceeding.~~

~~SEC. 3. Section 54999.8 is added to the Government Code, to read:~~

~~54999.8. Nothing in this chapter is intended to allow costs to be shifted from other ratepayers to a school district, county office of education, community college district, the California State~~

1 ~~University, the University of California, or a state agency, except~~
2 ~~where otherwise permitted by law.~~

3 54999.7. (a) Except as provided in Section 54999.3, a public
4 agency that provides public utility service may only charge a
5 public agency rates, charges, surcharges, or fees that are
6 determined on the basis of the same objective criteria and
7 methodology applicable to comparable nonpublic users.

8 (b) In addition to other notices required pursuant to state law
9 or local ordinance or rule, whenever a public agency that provides
10 public utility service holds a public meeting to establish or
11 increase any rate, charge, surcharge, or fee, that public agency
12 shall provide a written notice of the meeting not less than 60 days
13 prior to the date of the public meeting to any public agency that has
14 filed a written request for such a notice with either the clerk of the
15 governing body or with any other person designated by the
16 governing body to receive these requests.

17 (c) Upon request of any affected public agency made not less
18 than 30 days prior to the date of the public meeting to establish or
19 increase any rate, charge, surcharge, or fee, a public agency that
20 provides public utility service shall meet with the affected public
21 agency to disclose, describe, and discuss the data and
22 methodology for establishing or increasing the rate, charge,
23 surcharge, or fee.

24 SEC. 3. Section 54999.8 is added to the Government Code, to
25 read:

26 54999.8. (a) Any judicial action or proceeding by a public
27 agency that seeks a refund of a fee, rate, charge, or surcharge, or
28 increase in any of those costs, or that challenges the validity of a
29 fee, rate, charge, or surcharge, or increase, imposed on or after
30 January 1, 2004, pursuant to this chapter, shall be commenced
31 within 120 days of the effective date of the imposition of the fee,
32 rate, charge, or surcharge, or increase.

33 (b) Any action by a public agency under this chapter to validate
34 an ordinance, resolution, or motion imposing or increasing a fee,
35 rate, charge, or surcharge shall be in accordance with Chapter 9
36 (commencing with Section 860) of Title 10 of Part 2 of the Code
37 of Civil Procedure. However, no action by a public agency
38 imposing or increasing the fee, rate, charge, or surcharge shall be
39 commenced any earlier than 120 days from the effective date of the
40 imposition of the fee, rate, charge, surcharge, or increase.

1 (c) *In any judicial action or proceeding brought pursuant to*
2 *this section, the public agency imposing or increasing the fee, rate,*
3 *charge, or surcharge shall have the burden of producing evidence*
4 *that it was established pursuant to Section 54999.3 or Section*
5 *54999.7.*

6 SEC. 4. The amendments made to Section 54999.1 of, and the
7 addition of Sections 54999.7 and 54999.8 to, the Government
8 Code by this act are not intended to affect any litigation involving
9 public utility services provided prior to January 1, 2004, brought
10 prior or subsequent to that date. Nothing in the legislative history
11 of the amendments or additions made by this act should be
12 construed as any indication of the meaning of the law as it existed
13 prior to the effective date of the amendments and additions made
14 by this act.

